IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2548 of 2001

to

FIRST APPEALNo 2550 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMAJI VALAJI RABARI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR PV NANAVATI for Petitioners
MR RC KODEKAR AGP for Respondent No. 1
MR ND GOHIL AGP for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 19/10/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. These appeals were admitted earlier and Record and proceedings have been supplied by the learned counsel appearing in the appeals, which is relevant for the disposal of these appeals.

#. The present appeals are preferred under Section 54 of the Land Acquisition Act, 1894 (hereinafter to be referred to as "the Act") read with Section 96 of the Code of Civil Procedure, 1908 against the award made by the Extra Assistant Judge, Mehsana in Land Acquisition Reference Case Nos. 1266/95 to 1268/95, 1264/95, 1265/95, 1269/95 and 1270/95 on 5th September, 2000, entitling the claimants to the market price at Rs. 40/(Rs. 2.70 ps. per sq. mt. as already awarded by the Special Land Acquisition Officer and Rs. 37.30 ps. per sq. mt. by way of additional compensation and in some cases Rs. 4.05 ps. per sq. mt., the compensation already awarded by the Special Land Acquisition Officer and Rs. 35.95 per sq. mt. byway of additional compensation). The appeals preferred by the claimants are restricted to the claim of Rs. 64/- only.

#. The facts briefly leading to the present proceedings are as under.

#. Notification under Section 4 of the Act was gazetted on 19.1.91 for acquisition of lands situated at village Ganpatpura, Taluka Kalol, District Mehsana for the purpose of Narmada Canal Project (Narmada Dholka Branch). After following the procedure laid down in the Act, the Special Land Acquisition Officer made an award under Section 11 of the Act on 7.2.94, awarding the compensation at the rate of Rs. 2.70 per sq. mt. in some cases and Rs. 4.05 ps. per sq. mt. in some cases. The claimants were not willing to accept this offer however, they accepted this amount with objection. The claimants submitted applications under Section 18 of the Act and therefore, the Reference Court was required to determine the market price of the land on the date of notification published under Section 4 of the Act.

#. On behalf of the claimants, one Ramabhai Valjibhai Rabari, exh. 9 was examined, whose evidence reveals that he is engaged in the agricultural operation. He has given details about the lands acquired. With regard to the site of the lands, he has pointed out that the

village Ganpatpura is situated very near to Gandhinagar, Ahmedabad and Kalol at a distance of 7, 10 and 10 kilometers respectively. The biggest fertilizer unit of IFFCO is situated at a distance of 4 kms. Sabarmati-Kalol Highway (National Highway No. 8) is just at a distance of 4 kms. from the village Ganpatpura. Gota is at a distance of 5 kms. Gota is a part of Ahmedabad. (High Court is situated at Gota-Sola). He has further stated that Gandhinagar is 3 kms. from Shertha where there are several factories. This witness has further stated that at a distance of about 5 kms. there is Nirma Institute, Sanctuary, Gurukul etc. He has further stated that the village has facilities such as lights, water, telephone, bus etc.

#. About the lands, he has pointed out that the lands were agricultural lands and they were cultivating crops such as castor seeds, jira, millet etc. About the income, he has stated that they used to earn the income to the tune of Rs.15,000/- to Rs. 20,000/-. To substantiate his say, he has placed on record the village forms 7x12 at exh. 12 to 25. He has also stated on oath that some lands situated in the same village Ganpatpura were acquired and the claimants in that case were offered compensation at the rate of Rs. 40/- per sq. mt. by the Reference Court, against which appeals were preferred which were ultimately dismissed. He has produced copies of judgments vide exhs. 26 and 27. The lands situated at village Jaspur were also acquired. He has also produced on record exhs. 28 to 30. He has placed on record the site of village Ganpatpura exh. 31. With regard to nature, quality and fertility of the lands, he has stated that the lands of Ganpatpura are superior than the lands of Jaspur.

#. In the cross-examination, he has stated that Talati is required to indicate in the village form 7x12 about the cultivation. He has fairly stated that they do not keep accounts. He has denied the suggestion that the lands are inferior and that the lands are less fertile. He has denied the suggestion that he is not taking three crops in a year. In further cross-examination, he has stated that it is incorrect to say that the lands can not be used for agricultural operation and have become useless. He has denied the suggestion that about 50% of the amount is required towards the expenditure. He has denied the suggestion that for getting compensation, he is giving false evidence.

#. In view of the fact that the lands were acquired earlier situated at village Ganpatpura, it was fairly

stated before the Court that price is required to be determined on the basis of the price fixed earlier.

#. Before us a copy of the judgment delivered in First Appeal Nos. 1322/99 to 1332/99 was placed. The Division Bench (Coram: R. Balia, J as His Lordship then was and Ms. R.D.Doshit, J.) on 17.11.99 dismissed the appeals by a detailed judgment and held that the amount of compensation awarded at the rate of Rs. 40/- per sq. mt. calls for no interference.

##. In that case, notification was published under Section 4 of the Act on 13.12.85 and the Reference Court considered the evidence placed on record and also considered the awards for the lands situated at Jaspur. For the lands situated at Jaspur, for which notification under Section 4 was published on 3.12.85, the claimants were held entitled to get Rs. 72/- per sq. mt. It was also submitted that since compensation determined by the High Court in respect of the lands of the same nature of the adjoining village was at a higher price than the compensation awarded by the Reference Court in this case, no interference was called for. It is required to be noted that there cannot be straight jacket formula. The claimants are entitled to get the compensation considering the nature and fertility of the lands in question. In that case, apart from the instances on the basis of the use also, the Court arrived at a conclusion that Rs. 40/- per sq. mt. is not required to be disturbed.

#. It is required to be noted that if the price is fixed in a particular year and in the absence of any other sale instance, price is required to be determined in subsequent years. Ordinarily, 10% increase in price must be given. There is no dispute about this proposition. Considering this aspect, price is required to be determined.

##. It is also required to be noted that in the case of Thakarsibhai Devjibhai and others v. Executive Engineer, Gujarat and another [2001 AIR SCW 2417], the Apex Court pointed out about the distance and the difference between the lands acquired subsequently. The Apex Court pointed out as under.

> "So far as the other question of distance between the two classes of land, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is

inferior."

The Court further pointed out as under.

"No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing Rs. 10/- per sq. mt. cannot be sustained."

Thus, in the instant case, we find from the record that the lands were also acquired earlier. It is also required to be noted that in view of passage of time, the cultivators are provided with equipments and better facilities which would help them to have better yield. Considering the price factor, 10% of rice per year is required to be given. In view of what is stated hereinabove, as the lands were acquired at village Ganpatpura for which notification under Section 4 of the Act was published on 31.12.85 and the claimants were awarded compensation under the Act, in our opinion, considering 10% increase per year for the lands situated at village Ganpatpura, the claimants in these cases must be held entitled to get Rs. 62/- per sq. mt. In the result, the appeals are required to be allowed. Our attention was drawn by the learned AGP Mr. Kodekar to sub-para 6 of para 23 of the award with regard to entitlement of interest. It is required to be stated that the claimants are entitled to get interest on the additional compensation at the rate of 9% per annum from the date of taking possession and after the completion of first year, the claimants shall get 15% per annum till realization. In the instant case, the possession was taken prior to issuance of notification by the State Government and therefore, this direction is given.

##. Mr. Nanavati, learned counsel for the appellants urged that the claimants are also entitled to interest on solatium. He submitted that in view of pronouncement of judgment by the Apex Court in case SUNDER vs. UNION OF INDIA now reported in 2001 SOL Case No.551, the claimants are also entitled to interest on solatium. The Apex Court in the said judgment pointed out as under:

"27. We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra)

`Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'

28. In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

##. Accordingly, the claimants should be given benefits under the statute including the interest on solatium. In the result, the appeals are accordingly allowed with no order as to costs.

##. Mr. Nanavati submitted that the lands have been acquired much earlier but the amount of compensation as awarded by the Reference Court has not been paid. We are told that the proposal is already made and therefore, we direct that the amount at the rate of Rs. 40/- per sq. mt. shall be paid to the claimants within a period of three months and the difference shall be disbursed within a period of three months thereafter. The amount of compensation shall be paid after proper verification. The record submitted by the learned counsel to be taken on record.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

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